IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION Nos : 5725 and 7064 of 2004

WRIT PETITION Nos : 5725 of 2004:

Between:

1 M.S.Granites and Exports, a proprietory Concern rep.by its Proprietor, M.Sengottuvel, S/o M.Marimuthu,
R/o 20,21, Mandagapalayam, Kumaramangalam Post, Tiruchengode Taluk, Namakkal District, Tamil Nadu.
2 Vinod Granites, a Proprietory Concern rep.by its Proprietor, P.Govindan, S/o Peddappan,
R/o 8-457/7, Nirmalnagar, Ongole, Prakasam District.

..... PETITIONERS.

AND

1 Director of Mines & Geology, BRK Bhavan, Hyderabad.
2 The Assistant Director, Mines & Geology, Nizamabad.
3 Sri G.Gajalatha, W/o. G.Jayachandran,
Adarsha Nagar, Bala Bheemgal Road Bheemgal, Nizamabad District.
(R-3 is impleaded as per court order dated 4.8.2004 in WPMP 7994 of 2004).

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction one in the nature of Mandamus declaring the proceedings of the 2nd respondent in letter No.2123/QL-D/2004, dated 9-3-2004 as arbitrary, illegal without jurisdiction amounting to colour exercise of power and issue a consequential direction to the 1st and 2nd respondents not to act upon the same.

Counsel for the Petitioner:MR.C.V.MOHAN REDDY

Counsel for the Respondents 1 & 2: GP FOR MINES AND GEOLOGY

Counsel for the Respondent No.3: E.MANOHAR.

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,WRIT PETITION NO : 7064 of 2004:

Between:

1 M.S.Granites and Exprots, a proprietary concern, rep. by its Proprietor, M.Sengottuvel, S/o.M.Marimuthu,
R/o.21, 21, Mandagapalayam, Kumaramangalam Post, Tiruchengode Taluk, Namakkal District, Tamil Nadu.
2 Vinod Granites, a proprietary concern, rep. by its Proprietor, P.Govindan, S/o.Peddappan,
R/o.8-457/7, Nirmalnagar, Ongole, Prakasam District.

..... PETITIONERS.

AND

1 Director of Mines and Geology, BRK Bhavan, Hyderabad.
2 The Assistant Director, Mines and Geology, Nizamabad.
3 Smt.G.Gajalatham, W/o.Jayachandran,
Road, Bheemgal, Nizamabad District.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction one in the nature of Mandamus declaring the proceedings of the 2nd respondent in letter No.2123/QL-D/2004, dated 1-4-2004 in directing the petitioners not to carry on the quarrying operations in the land in petitioners' possession in Sy.No.619, Konasamundar Village, Kammarapally Mandal, as arbitrary, illegal, without jurisdiction amounting to colourable exercise of power, contrary to the A.P.Minor Minerals Concession Rules and issue a consequential direction to the 1st and 2nd respondents to permit the petitioners to carry on the quarrying operations in the quarries leased out to the petitioners.

Counsel for the Petitioner:MR.C.V.MOHAN REDDY

Counsel for the Respondents 1 & 2.: GP FOR MINES AND GEOLOGY

Counsel for the Respondent No.3: E.MANOHAR.

The Court made the following :

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THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NOS. 5725 AND 7064 OF 2004

COMMON ORDER:

Heard Sri C.V.Mohan Reddy, the learned counsel appearing for the common petitioners in both the writ petitions and the learned Government Pleader for Mines and Geology appearing for the respondents 1 and 2 and Sri E.Manohar, the learned senior counsel appearing for the contesting third respondent.

Since common question arises in these two writ petitions, they are being taken up together for disposal.

The petitioners herein, who are the quarry lease holders, filed these writ petitions, *inter alia,* seeking writ of Mandamus 1) declaring the impugned letters dated

09.03.2004 and 01.04.2004 issued by the second respondent herein as bad and illegal.

The case of the petitioners is to the effect that both of them owned initially prospecting lease and also subsequent quarry lease to the extent of 1.9 hectares and 1.5 hectares in Survey No.619 of Konasamunder Village, Kammarpally Mandal, Nizamabad District and the said lease is for a period of 20 years and they have been carrying its operations. Whereas the contesting third respondent herein is having quarry lease in respect of the land in Sy.No.131 of Mendora village, Bheemgal Mandal, Nizamabad District. These two lands are quite adjacent to each other and separated by a village bound. However, having regard to the encroachments as alleged, there had been surveys and demarcations earlier at the time of granting not only prospecting lease but also quarry lease both for the petitioners and the third respondent respectively and the boundaries were fixed and in spite of the same, the impugned proceedings have been issued for the joint survey once again by the second respondent herein who has no power, authority or jurisdiction. Further, there is also no base for such proposed action. It is stated that the prospecting lease was granted for a period of two years initially and after conducting survey and fixing the boundaries, even at the stage of granting quarry lease, there was once again survey, of which the third respondent was having full knowledge and having been present, boundaries were fixed. Therefore, at this point of time, the impugned action on the part of the respondents to conduct joint survey and to stop any quarrying work is totally unsustainable. Further, it is the case of the petitioners that the impugned action is nothing but a rouse taken recourse at the instance of the third respondent with a view to help her and allow the quarrying in respect of the land for which the petitioners held valid lease. Therefore, there are no bona fides in the impugned action on the part of the second respondent. Hence, the writ petitions.

In the counter affidavit filed on behalf of the respondents 1 and 2, which is sworn to by the second respondent himself, there is no denial to the factum of granting the initial prospecting lease and quarrying lease in favour of the petitioners in respect of the lands in Survey No.619 situated in Konasamunder village, Kamarpally Mandal, Nizamabad District. However, it is stated that the predecessor holders of lease of the

third respondent namely M/s Lakshmi Rocks and Laveena Granite applied for grant of prospecting licence on 17.06.1999 and the said land in Sy.No.131 in an extent of 2.00 hectares was surveyed and demarcated by the Office Surveyor on the same day and accordingly they were granted prospecting licence on 22.03.2000 and executed the same on 19.05.2000. Subsequently, the same was transferred to the third respondent herein on 03.02.2003 and the transfer lease was executed by the second respondent on 27.02.2003 and 07.03.2003. However, it is pointed out that only in view of certain applications filed by the Sarpanches of both the villages having regard to the boundary dispute to the concerned authorities, and on the receipt of the report, the impugned notice has been given for conducting a joint survey to identify the boundary in between the two lease holds held by the petitioners and the third respondent herein. Therefore, at this stage, it is not open to the petitioners to make challenge the impugned proceedings. Further, it is pointed out that having regard to the interim orders granted by this Court suspending the impugned notice, both the parties were asked to stop the quarrying as per the impugned letter dated 01.04.2004. Thus, the entire action on the part of the second respondent is only with a view to find out any encroachment or illegal quarrying in respect of the land under lease. Thus, there are no merits in the writ petitions and the same are liable to be dismissed.

In the affidavit filed by the contesting third respondent who was subsequently got impleaded, it is stated that having regard to the fact that there are no clear demarcations on the ground in regard to the boundaries of two villages, a representation was made by the Sarpanch of Mendora Grama Panchayat on 01.12.2003 to the Assistant Director, Survey and Land Records, Nizamabad District for conducting survey and fix the boundaries. Similarly the Sarpanch of the other village namely Konasamunder village also filed representation on 01.12.2003 to the same authority for determining the boundary. This is followed by the letters dated 20.12.2003 by the third respondent through its General Power of Attorney Holder requesting them to fix up the boundaries. In view of the fact that the petitioners have encroached upon the lease area in S.No.131 of Mendora village and is carrying on illegal quarrying the granite. After conducting the survey by the said Assistant Director, Survey and Land Records in the presence of Sarpanches of both the villages on 12th and 15th February 2004, proposed final survey and demarcation of

village boundaries was to be done on 19.02.2004. Thereupon, it was found that there was an encroachment on the part of the petitioners and therefore, the third respondent submitted application before the second respondent for taking appropriate action. Hence, the impugned notice has been issued for conducting of joint survey in the presence of the petitioners and the third respondent herein. It is further stated that the village boundary dispute was settled between the two villages by the Assistant Director, Survey and Land Records, necessarily it follows that the area held by the petitioners is to be properly ascertained for the purpose of stopping illegal quarrying by the writ petitioners and also seize the granite which has been illegally quarrying from the area in Survey No.131 of Mendora village. Thus, it is stated that the impugned action is nothing but only as a result of proper identification of the boundary by the competent authority. Hence, there is no illegality in regard to the said action.

The learned counsel for the petitioners strenuously submitted that having regard to the surveys which had already been conducted both at the stage of granting prospecting licence and also the quarry lease and identifying the areas of the lease hold for the purpose of quarrying, the question of conduct of any fresh survey by the second respondent does not arise and further it is also totally without any jurisdiction. That apart, it is also his case that the petitioners had no knowledge at least any opportunity was given in the surveys alleged to have been conducted on 12th and 15th February 2004 by the Assistant Director, Surveys and Land Records. Therefore, neither the said proceedings are binding on the petitioners nor there is any basis for initiating the impugned action . It is his case that as the entire exercise is in regard to the non-existing dispute, the second respondent has no power under the provisions of the A.P.Surveys and Boundaries Act.

Sri E.Manohar, the learned senior counsel appearing on behalf of the third respondent submits that having regard to the facts and circumstances and especially where the two lease holds are quite adjacent to each other falling into two different villages and having regard to the boundary being properly identified and the petitioners carrying on illegal quarrying, the impugned action is very much

necessary before such activities are stopped and proper consequential action is taken.

Considering the submissions made and on perusal of the material, the only question which arises for consideration is that as to whether the impugned action of the second respondent herein for conducting a joint survey in the presence of the petitioners and the third respondent is valid ?

There is no dispute in regard to the respective quarry lease held by the petitioners and also the third respondent in two different lands which are situated in two different villages. Admittedly, these lease holds are situated quite adjacent to each other and gets separated by the village boundary. There is also no dispute to the fact that both at the stage of granting prospecting licence and also quarry lease in favour of the petitioners and the third respondent for their respective areas in the respective villages, there have been surveys and the lease hold has been identified by the second respondent itself and the concerned authorities and the same was granted after obtaining necessary “NO OBJECTION” certificate from the concerned Revenue Officials. Apparently, the present impugned action is emanated from the alleged inspection conducted by the Assistant Director, Surveys and Land Records on 12.02.2004 and 15.02.2004 and on receipt of the report, the impugned notice has been given to the petitioners as well as the third respondent herein.

The case of the petitioners is that the entire impugned action is only at the instance of the third respondent herein with a view to grab the portion of the land which is part of the lease hold validly held by them. Whereas it is the case of the third respondent that it is the petitioners who have been encroaching the land taking advantage of the boundary dispute and identification, and therefore, that the boundary is fixed, there cannot be any difficulty in identifying the extent of encroachment made by the petitioners. There is no explanation forthcoming on behalf of the respondents 1 and 2 as to any silence on their part in regard to any dispute as to the identity of the boundary while the surveys were conducted separately in the presence of both the petitioners and also the third respondent in their respective areas. Respective lease holds not only fall in two different survey numbers but also in two different villages. In view of the same, there cannot be any dispute to make a proper identification of the site. The entire exercise of granting prospecting licence and also the lease in favour of both the sides has been in

process for a quite long time and there has been no whisper of what-so-ever nature in regard to the existence of any such dispute. Further, apparently, the impugned notice by the second respondent for conducting a joint survey is neither based on its own verification in regard to any dispute arising. Even as per their own records in regard to the grant of prospecting licence and also the quarry lease for both the sides do not indicate any such dispute between the petitioners and the third respondent herein. Admittedly, the alleged survey conducted by the Assistant Director, Surveys and Land Records and on the report of which, the impugned notice has been given, is not to the notice or made after giving any opportunity to the petitioners herein. However, it is also to be directed that immediately after the representations have been filed by the respective Sarpanches which surprisingly is of even date namely 01.12.2003, the third respondent itself also followed up with similar such request by filing an application on 20.12.2003 which resulted conducting of the survey by the Assistant Director, Surveys and Land Records, on 12.02.2004 and 15.02.2004 there is absolutely no explanation forthcoming even from the third respondent as to why and how the same enquiry could be conducted in the presence of the petitioners herein or even notice was given nor any opportunity was provided. Thus, it cannot be said that the said report of the Assistant Director, Surveys and Land Records can be made or put against the petitioners for any purposes of what-so-ever nature. Except the said report, there is no other material available on record for issuance of the impugned notice by the second respondent herein for conducting joint survey. Even the impugned notice does not show that the said report of the Assistant Director, Surveys and Land Records indicates any encroachment from either of the sides in respect of the other lease holds. Be that as it may, it is not explained by the third respondent as to how the survey was sought to be conducted by the Assistant Director, Surveys and Land Records at the instance of both the Sarpanches and the third respondent together. In view of the same, it can safely be held that the entire proceedings of the Assistant Director, Surveys and Land Records though he was not made as a party to these writ petitions, being one without any notice to the petitioners, for which the third respondent having been a party, cannot be valid and suffer from want of principles of natural justice. However, by taking into the totality of the circumstances and especially with a view to avoid any further dispute *inter se* between the parties, it can safely be said that there is absolutely no basis for the second respondent herein to initiate any such action for conducting of joint survey and the same requires to be set

aside. However, it shall be open to the appropriate authorities concerned to make a proper survey jointly and go into any question of encroachment by either of the side and take appropriate action in accordance with law after giving notice and opportunity to both sides. The entire exercise shall be completed within four weeks from date of receipt of the order.s

Both the writ petitions are, accordingly, allowed. No costs.

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B. PRAKASH RAO, J

14th March 2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday, the Fourteenth day of March Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 Director of Mines & Geology, BRK Bhavan, Hyderabad.
2 The Assistant Director, Mines & Geology, Nizamabad.
3 Two C.Cs. to the G.P. for Mines and Geology, High Court Buildings, Hyderabad (OUT).

4 Two C.D. copies.